

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT SIZEMORE,)	CASE NO.: 5:06CV2926
)	
Plaintiff,)	
)	JUDGE JOHN R. ADAMS
v.)	Magistrate Judge George J. Limbert
)	
STEVE PREDOJEV, et al.,)	
)	<u>REPORT AND RECOMMENDATION</u>
)	<u>OF MAGISTRATE JUDGE</u>
Defendants.)	

For the following reasons, the undersigned RECOMMENDS that the Court DISMISS Plaintiff's complaint because he has failed to perfect service upon Defendants.

I. PROCEDURAL HISTORY

On December 6, 2006, Plaintiff Robert Sizemore ("Plaintiff"), filed a *pro se* complaint against Defendants alleging violations pursuant to 42 U.S.C. §1983, 42 U.S.C. §1997a and 42 U.S.C. §12112(a), the Americans with Disabilities Act. ECF Dkt. #1. On April 6, 2007, the Honorable Judge John R. Adams referred this case to the undersigned for general pretrial supervision. ECF Dkt. #5.

On July 12, 2007, the undersigned issued an Order to Show Cause requiring Plaintiff to show cause on or before July 26, 2007 why the undersigned should not recommend dismissal of his case for failure to perfect service upon Defendants. ECF Dkt. #6.

II. LAW AND ANALYSIS

Rule 4(m) of the Federal Rules of Civil Procedure provides in pertinent part:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m). Accordingly, if a plaintiff fails to timely serve a defendant and shows good cause for failing to do so, the Court must extend the time for service. However, even if a plaintiff cannot show good cause, Rule 4(m) allows the Court the discretion to either dismiss the action without prejudice or to direct that the plaintiff effectuate service within a specified time.

Fed. R. Civ. P. 4(m), Commentary.

In this case, the docket shows that Plaintiff has made no attempt to serve any of the Defendants. In addition, Plaintiff has failed to respond to the Court's Show Cause Order. Accordingly, Plaintiff provides no good cause to excuse his failure to effectuate service and the undersigned finds no reason otherwise to excuse this failure. Consequently, the undersigned recommends that the Court dismiss Plaintiff's complaint against Defendants pursuant to Rule 4(m) of the Federal Rules of Civil Procedure for failure to perfect service upon Defendants.

III. CONCLUSION

Plaintiff has failed to timely serve Defendants and fails to provide good cause for said failure. Further, the undersigned finds no other reason to extend the 120-day service deadline.

Accordingly, the undersigned recommends that the Court dismiss Plaintiff's complaint against all Defendants without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

Dated: August 2, 2007

/s/George J. Limbert
GEORGE J. LIMBERT
United States Magistrate Judge

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of service of this notice. Failure to file objection within the specified time WAIVES the right to appeal the Magistrate Judge's recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).